IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.634 of 2004 (M/S)

Mahmood Hasan S/o Mohd. Wazira,
R/o Mohalla Pathanpur, Kasba Manglor,
Tehsil Roorkee,
District Haridwar. .....Petitioners.

Vs

1. FTC Ist/ Addl. District Judge,
   Roorkee, District Haridwar.
2. Sageer S/o Late Mohd. Umar.
3. Yusuf S/o Late Mohd. Umar.
4. Sukkha S/o Late Mohd. Umar.
5. Mahaboob Mistri S/o Late Mohd. Umar.
6. Smt. Saeeda W/o Late Shamim.
   R/o Village Libbar Hedi, Pargana Manglore,
   Tehsil Roorkee, District Haridwar. .....Respondents.

Sri Rajendra Singh, Advocate for the petitioner.
Sri A.K. Sharma, Advocate for respondent Nos. 4 & 5.

Date: 30th August, 2006

Hon'ble Rajesh Tandon, J.

Heard Mr. Rajendra Singh, learned counsel for the petitioner and Mr. A.K. Sharma, learned counsel for the respondents Nos. 4 & 5.

2. By the present writ petition, the petitioner has prayed for a certiorari quashing the order dated 17.05.2004 passed by respondent No.1 in Misc. Case No.7 of 2003 (Annexure NO.6 to the writ petition).

3. Briefly stated, late Mohd. Umar, father of respondents Nos. 2 to 5, was the owner in possession of the disputed property. He owned 1/4th of the Khasra and was in possession of his part until he died. The above named Mohd. Umar executed an agreement to sale his part in petitioner's

favour on 15.05.1998. The petitioner was ready and willing to get the sale deed executed. On 09.04.1999, petitioner served upon late Mohd. Umar a notice whereby he was called upon to be present in the office of sub Registrar on 14.05.1999 for execution of the sale deed in favour of the petitioner. The petitioner remained present in the office of Sub Registrar on 14.05.1999, but Mohd. Umar did not turn up. Later on, the petitioner came to know that Mohd. Umar has expired. Thereafter, the petitioner contacted respondents Nos. 2 to 6, who are heirs and legal representatives of Late Mohd. Umar, but they did not agree for execution of the sale deed.

4. Thereafter, the petitioner filed a suit for specific performance against respondents Nos. 2 to 6 in the court of Civil Judge (Senior Davison), Roorkee, which was numbered as Original Suit No.81 of 2000. Respondents Nos. 2 to 6 (defendants) sought time to file their written statement. However, the defendants did not put in appearance after 26.05.2001 and the suit was ordered to proceed-ex parte.

5. The Civil Judge (Senior Division), Roorkee, Haridwar, after considering the ex-parte evidence, decreed the suit vide order dated 29.09.2001. Thereafter, the petitioner filed an execution application, which was numbered as Case No. 9 of 2002 and a sale deed was executed by the order of the court in favour of the petitioner.

6. Therefore, on 04.11.2003, respondents Nos. 4 & 5 (defendants) filed an application under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and decree dated 20.09.2001, which was numbered as Misc. Case No.7 of 2003. Respondents No.1 allowed the said application vide impugned order dated 17.05.2004.

7. After considering all the facts and circumstances, I am of the view that the impugned order dated 17.05.2004 setting aside the ex-parte decree does not suffer form any infirmity or illegality.

8. However, it is directed that Original Suit No. 81 of 2000 shall be decided expeditiously after hearing both the parties and after giving opportunities to both the parties to lead their evidence. It is also directed that both the parties shall maintain status quo till pendency of the suit.

9. Subject to the above directions, the writ petition is dismissed.

(Rajesh Tandon, J.)